

Mukanda and ors. Vs. State

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Court : Rajasthan

Decided On : Nov-30-1956

Reported in : AIR1957Raj331; 1957CriLJ1187

Judge : Sharma, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 174 and 239; [Indian Penal Code \(IPC\), 1860](#) - Sections 141, 147 and 149; [Evidence Act, 1872](#) - Sections 157

Appeal No. : Criminal Appeal No. 95 of 1955

Appellant : Mukanda and ors.

Respondent : State

Advocate for Def. : B.C. Chatterjee, Asst. Govt. Adv.

Advocate for Pet/Ap. : C.L. Agarwal, Adv.; J.P. Jain, Adv.

Judgement :

Sharma, J.

1. This is an appeal by Mukanda and 14 others who have been convicted and sentenced by the learned Sessions Judge, Alwar as follows:

Name of the appellantConvictionSentence(1) Mukanda

(2) HariSingh

(3) Maman

(4) Mangla

(5) Bansi

(6) Ghisa

(7) Banwari

(8) Harnath Section 147, I.P.C. 1 1/2 years' R. I. and a fine of Rs. 100, each and in default three months' imprisonment each. (9) Ramjilal

(10) Ram Swaroop

(11) Meena

(12) Amra Sections 147 & 323, I.P.C. 4 months' rigorous imprisonment each. 4 months' rigorous imprisonment each sentence to run concurrently. (13) Balbir (14) Sohan (15) Chelu Section 323, I.P.C. Four months' rigorous imprisonment each.

2. According to the prosecution, in the village Anandpur, Tehsil Behror, District Alwar, there are two principal communities, namely, Ahirs and Chamars. There are about 50 houses of Ahirs and 20 or 25 houses of Chamars there. The Chamars had made applications to the district authorities for allotting some banjar land in the village to them for cultivation; The Ahirs took strong exception to it and on this ground, the relations between the two communities were strained.

The Ahirs prevented the Chamars from grazing their cattle in the banjar land and also from using water of the village pond. Criminal proceedings were, therefore, going on between these two communities under Section 107, Cr. P. C., when the occurrence of the 28th September, 1954 with which I am concerned in this appeal, took place. On the said date in the morning, the Ahirs of Anandpur including the first eight appellants mentioned above, formed an unlawful assembly with the common object of beating the Chamars and to teach them a lesson and in

prosecution of that common object, the first named eight appellants, hereinafter to be referred to as the appellants first set, caught hold of Hardev Chamar and belaboured him with sticks, who after attending his call of nature, was sitting outside his house on a Chabutra and was washing his hands and face.

Hardeva's son Harchand and Mst. Chandni, Har-chand's wife and the latter's daughter Saraswati, came out of the house in order to rescue Hardeva but they were also beaten by the accused. Hardeva was removed to his house by Mst. Chandni and Saraswati in an unconscious condition and there he succumbed to his injuries at about noon time. A mob consisting mostly of Ahirs, gave beating to the other Chamars of the village and threatened them with dire consequences in case they came out of their houses. The accused surrounded the houses of Ghamars and prevented them from going out of the village and making a report about the incident. Harchand, son of the deceased; however, slipped out of the village next morning under the pretext of bringing grass from the jungle for the cattle and went to Police Station Neemrana, which is about 10 miles from Anandpura.

3. First information report was lodged by Harchand on 29th September, 1954, at the police station, Neemrana. The Station House Officer, Neemrana. Shri Bal Krishna soon started for the spot of occurrence and prepared a site plan (Ex. P-2). Inquest report (Ex. P-3) of the deceased Hardeva, was drawn up and thereafter the body of the deceased was sent to Neemrana Dispensary for post mortem examination. Dr. Jagdish Sharma performed the post mortem examination, which is Ex. P-20 on 29th September, 1954. A stick is said to have been recovered from the house of Maman and another stick from the house of Ghisa, which were seized and sent for examination by the Chemical Examiner at Jaipur.

Sticks are also said to have been recovered from the houses of the other accused persons. The Station House Officer, after investigation, arrested 24 persons and challaned them to the Court of the Sub-Divisional Magistrate, Behror. Learned Magistrate, after holding the preliminary enquiry discharged six accused persons and committed the appellants first set to stand their trial under Sections 302, 147 and 342, I. P. C. and the appellants, Ramjilal, Ram Swaroop, Meena and Amra

hereinafter to be referred to as the appellants second set and the appellants Balbir, Sohan and Chelu hereinafter to be referred to as the appellants third set, with three others to stand, their trial under Sections 147. 302. 323. 325, I. P. C. in the Court of Sessions Judge, Alwar.

4. All the accused pleaded not guilty. The prosecution examined 26 witnesses and produced certain documents. The appellants denied having committed any offence and Pleaded that they were implicated in the case on account of enmity with the Chamars. The appellants did not produce any defence evidence.

5. Learned Sessions Judge, out of the eighteen accused, acquitted Hira, Chhaju and Jai Singh giving them the benefit of doubt and convicted and sentenced the appellants, as mentioned in the opening part of this judgment.

6. The appellants have come in appeal.

7. I have heard Shri C.L. Agarwal on behalf of the appellants and Shri B.C. Chatter Ji, Assistant Government Advocate, assisted by Shri J.P. Jain, for the State.

8. Mr. Agarwal raised the following points in his arguments:

1. There was no evidence of an unlawful common object against the appellants.

2. Learned Sessions Judge himself disbelieved the story about the belabouring of Hardeva but believed the evidence of the same witnesses for convicting appellants first and second sets, under Section 147. I. P. C.

3. According to the finding of the learned Sessions Judge, the appellants were divided into three parties, and therefore, it has been wrongly held that the appellants first and second sets were guilty of riot with any common object.

4. It was illegal for the lower Court to hold a joint trial of all the accused.

5. The prosecution evidence is utterly unreliable and has not been proved without doubt that any of the appellants committed any Of the offences for which they have been convicted.

9. On behalf of the State, it was argued by Mr. Chatterji that the series of events deposed to by the prosecution witnesses constituted one and the same transaction, and therefore, the lower Court was fully justified in framing charges against all the accused in respect of various offences, as they were committed in the course of one and the same transaction, it was argued that where the prosecution has alleged that there was unity of criminal behaviour actuated by a common intention on the part of all the accused, all the accused would be jointly triable under Section 239, Cr. P. C. It was argued that the unity of criminal behaviour and the common intention prompting it would render all that was done in furtherance of an object as a part of one transaction and the necessity of a joint trial is strengthened if there is an additional element of proximity in time as well.

For this reliance was placed upon the judgments in the case of *Bishunath v. Emperor*, AIR 1935 Oudh 190 (A) and *Provincial Government, C. P. and Berar v. Dinanath Lala Ganpatrai*, AIR 1939 Nag 263 (B). It was argued that, the relevant point of time in proceedings at which, the condition as to sameness of transaction, must be fulfilled is the time of accusation and not that of the eventual result. For this, reliance was placed upon a ruling of their Lordships of the Privy Council in *Babulal Chaukhani v. Emperor*, AIR 1938 PC 130 (C) and *Hirday Singh v. Emperor*, AIR 1946 Pat 40 (D). It was argued that the case as laid by the prosecution in the beginning of the trial was that all the accused committed riot and in pursuance of a common unlawful object committed various acts of violence.

It was, therefore, not illegal to jointly try all the accused. It was further argued that the prosecution evidence was quite sufficient to bring home the offences for which they have been convicted to the appellants. The finding of the learned Sessions Judge that it was not proved beyond doubt that Hardeva was belaboured by the appellants first set, was challenged. It was argued that there was overwhelming evidence to prove that Hardeva was belaboured by the appellants 1st set. It was argued that it was not justifiable for the lower Court not to accept the story of Hardeva's belabouring simply because the medical evidence was not definite that any injuries existed on the body of Hardeva on those parts of the body at which blows were said to have been dealt by these appellants.

The body of Hardeva was in a putrefied condition at the time of post mortem examination and so the injuries could not be detected by the doctor. Moreover, the evidence of the prosecution witnesses was corroborated by the evidence of the Police Officer, who prepared the inquest report and the contents of the inquest report. It was also argued that the common object of all the appellants has been fully established that the appellants wanted to teach a lesson to the Chamars on account of their claim to the banjar land. It did not matter that acts of violence took place at different times. It was not the proximity of time but the community of purpose which made all the appellants guilty of an offence of riot.

10. I have considered the arguments of both the learned counsel. I may first take up the legal objection that the joint trial of all the appellants was illegal. The argument of Mr. Agarwal is that ordinarily there should be a separate trial for every distinct offence of which any person is accused and that there should be a separate charge and every such charge should be tried separately, except in the cases mentioned in Sections 234, 235, 236 and 239. I. P. C. This is true but the section itself makes an exception in certain cases, and if a case comes 'Under Section 239 which applied to the joint trial of several accused, the appellants in this case could be jointly tried. Section 239 so far as it applies to the present case, is as follows:

'239. The following persons may be charged and tried together, namely:

(a) Persons accused of the same offence committed in the course of the same transaction;

* * * * (d) persons accused of different offences committed in the course of the same transaction;

* * * * In the present case, the charge against the accused shows that they had the same common object of preventing the Chamars of the village Anandpur from breaking the banjar land, and with that object, they committed a riot on the 28th September, 1954. Thus, according to this charge sheet, the case comes clearly under Clause (a) of Section 239. Cr. P. C., as all the persons were accused of the same offence, namely riot, committed in the course of the same transaction. In the

course of the same riot, the accused Jaisingh, Mina, Ramjilal, Amra, Chhaju, Sohan, Ram Swaroop. Hira and Chelu were charged with Section 323, I. P. C. read with Section 149, I. P. C. for causing simple hurt to different persons, and Balbir was charged with an offence under Section 325, I. P. C. read with Section 149 for causing grievous hurt to Dina and Mukanda, Maman, Hari Singh, Mangla Ghisa, Bansi. Har Nath and Banwari were charged under Section 302. I. P. C. read With Section 149 for having caused the death of Hardeva.

Thus different persons were accused of different offences committed in the course of the same transaction (riot). They could, therefore, be jointly tried under Section 239, Clause (d), Criminal P C. All the accused in the course of the same riot, were charged under Section 342, I.P.C., read with Section 149, I.P.C. for wrongly confining the Chamars of Anandpur inasmuch as the victims of the riot of other Chamars were prevented from coming out of their houses in order to lodge a report of the riot and offences committed in the course thereof at the police. Therefore this latter act, fell within Clause (a) of Section 239, According to the charge sheet, therefore, under Section 239, the accused could well be tried jointly for the riot and all the offences committed during that riot. It was held in the case of AIR 1946 Pat 40 (D): 'As to whether persons can be tried together at one trial and as to whether different charges can be framed against accused persons in one trial depends upon the accusation made by the prosecution and not the result of the prosecution.'

The same view was taken by their Lordships of the Privy Council in the case of AIR 1938 PC 130 (C) and it was held:

'The relevant point of time in the proceedings at which the condition as to sameness of transaction must be fulfilled is the time of accusation and not that of the eventual result.'

The argument of the learned counsel for the appellants was founded on the fact that the appellants third set, Balbir, Sohan and Chelu had not been convicted under Section 147, I. p. C. and therefore, they could not be said to have committed the offence for which they have been convicted in the course of the same transaction. Further, the argument was that the appellants second set have not

been proved to have taken part in beating Hardeva, Harchand or Chandani and were not proved to have been among the appellants first set when they committed riot and therefore, they could not be jointly tried along with the appellant's first set.

This argument of the learned counsel does not stand in the light of the principle enunciated by their Lordships of the Privy Council in the case of AIR 1938 PC 130 (C) and by Patna High Court in the case of AIR 1946 Pat 40 (D). In the eventual result, it may be that the appellants third set were not proved to have committed riot, or to have committed the offence of which they were convicted during the course of the same riot.

But at the time of the accusation, they were charged for having committed these offences in the course of the same riot which was committed by the appellants first set and the second set were also accused of having committed various offences in the course of the same riot, which were committed by the appellants first set.

11. Although the argument on this point was vigorously advanced by Shri Agarwal in the beginning but in his reply he too did not consider it proper to press this argument and said that he did not want a re-trial for it would cause a great hardship to the accused and that if the Court finds some or all of the appellants to be guilty of some offence, they might be dealt with leniently at this very stage rather than being driven to a fresh trial, As, however, I have said above, there was no defect in the joint trial so even if the argument would have been pressed by him till the end, I would have had no reason to hold that the trial was bad.

12. Coming to the merits of the case, I shall first deal with the case of the appellants first set. They have been convicted under Section 147, I. P. C. and therefore the following points have to be considered:

1. Whether the appellants first set formed an unlawful assembly within the meaning of Section 141, I. P. C.?
2. What was the common object Of the assembly?
3. Whether that unlawful assembly or anymember thereof used force or violence in prosecution of the common object of such assembly?

13. So far as the first point is concerned, the appellants first set were eight in number. For an unlawful assembly, the minimum number required is five. The evidence of Har Chand (P. W. 1), Mst. Chandni (P. W. 2), Mst. Saraswati (P. W. 3), and Ganesh (P. W. 10) shows that the appellants first set belaboured Hardeva, the father of Har Chand (P. W. 1) and were crying mar lo, mar lo, (give beating). Their evidence also shows that all these eight appellants were armed with lathis which they wielded. The evidence of Har Chand (P. W. 1), that of his wife Mst. Chandni (P. W. 2) and that of his daughter Mst. Saraswati (P. W. 3) shows that when Harchand wanted to rescue Hardeva, Mangala one of the appellants first set, gave a lathi blow to Harchanda.

The evidence of Ganesh also shows that all the eight appellants first set, were belabouring Hardeva. In the first information report also it was stated by Harchand that the appellants first set were all armed and rushed upon Hardeva and began to beat him and when he as well as his cousin Ganesh, Parbhat, Dina, Mst. Chandni and others went to the rescue of Hardeva, they were also beaten. No doubt it has been stated in the first information report that Banwari was armed with a Pharsa but it has been explained that a lathi was mistaken by him for a pharsa. It has been argued by Mr. Agarwal that no external or internal injuries were found on the person of Hardeva at the time of the post mortem examination and therefore, the story about the belabouring of Hardeva is a mere myth.

No doubt, learned Sessions Judge has not been able to find definitely on account of medical evidence that Hardeva was beaten to death or any injuries were caused to him by the appellants first set. But whatever may be said about the case of death of Hardeva, I do not feel the least doubt in my mind that force or violence was used to Hardeva at the time of the occurrence by the eight appellants first set. From the evidence of Shri Bal Krishna, Station House Officer, Neemrana who investigated the case and saw the body of Hardeva about 6-00 p.m. on the 29th September, 1954, it is found that he found the injuries on the body of Hardeva which are given in the inquest report (Ex. P-3).

In the inquest report too injuries have been shown on the head, one on the parietal of the left ear and 10 or 12 contusions have been shown on the back. It was

argued by Mr. Agarwal that in the face of the medical evidence, the mention of injuries in the inquest report cannot prevail. It is true that if the investigation officer had given any opinion of his as to how those injuries could be caused or any other technical opinion as could be given only by a medical report, it would not have been safe to accept it. But he stated a fact which he saw with his own eyes and it cannot be said that it should not be read in corroboration of the evidence of the eye-witnesses.

Of course, on account of a very advanced stage of putrefaction, Dr. Jagdish Narain (P. W. 26) who carried out post mortem examination on the body of Hardeva could not find any incised wound or other injuries on the body. He, however, says that there was a big haematoma above left ear and some blood clotted in left ear. He also says that on internal examination, he found that scalp was slightly cracked underneath the left side haematoma. The post mortem examination report, therefore, partly supports the inquest report in the matter of injuries. The fact that there was a crack in the skull bones under the left side haematoma and there was clotted blood in the ear, goes to show that some injuries were caused to Hardeva when he was alive. So far as the contusions on the back are concerned, they could not have been found after the advanced stage of putrefaction in which the body of Hardeva was at the time of the post mortem examination.

14. Modi says in Test-Book of Medical Jurisprudence and Toxicology (7th Edition, page 139):

'Owing to the formation of these gases under the skin blisters containing a reddish coloured fluid form on the various parts of the body. When these burst, the cuticle being softened peels off easily. Bruises and abrasions may become unrecognisable when the cuticle is denuded. Wounds whether caused before or after death, begin to bleed once more owing to the pressure of gas within the heart and blood vessels. Wounds also become so altered in appearance that it may be difficult to form an opinion as to whether they were caused before or after death, unless the presence of the clotted blood can be distinctly made out.'

It is, therefore, no wonder that no contusions or other injuries were found on the dead body of Hardeva at the time of post-mortem examination. The presence of clotted blood, however, at the time of the post-mortem examination, shows that some injury from which blood came out, was caused near the left ear to Hardeva before his death.

Therefore, far from negating the prosecution evidence of the eye-witnesses in the matter of belabouring of Hardeva, the post-mortem examination report lends some support to the story of his belabouring given by the prosecution eyewitnesses. It is not necessary for an offence under Section 147, I, P. C. that force or violence should be used to such an extent that death or grievous injury might be caused. For an offence under Section 147, I, P. C. force or violence to whatever extent used, would be sufficient if it is used by all or some of the members of an unlawful assembly. As I am not concerned with the fact as to how Hardeva died, it is enough for me to say that it is proved beyond doubt by the prosecution evidence that force or violence was used to Hardeva by the appellants first set it is not necessary for me to investigate the cause of Hardeva's death, in this appeal.

15. It was argued that some semi digested food was found in the stomach of Hardeva on internal examination and it was argued that death should, have been caused within two or four hours of the evening meal which he took on the 27th September, 1954. Learned Sessions Judge, has however, given certain illustrations from Tylors' Principles and Practice of Medical Jurisprudence. Vol. II under the head, 'Duration of Digestion of Indian Food', (Page 804), in which a small mass of undigested rice and chappatti taken at 10-00 p.m. was found in the stomach of a person murdered at 5 a. m.

He also observes that a person fed on rice and chapatti was found with undigested food when he died six hours after the taking of that food. The food in the stomach of Hardeva was not altogether undigested, and although there is evidence to show that he had gone to answer the call of nature early in the morning of the 28th September, 1954, there is nothing to show that he was able to clear off his bowels. The fact, therefore that some undigested food was found in the stomach of

Hardeva at the time of post-mortem examination, does not negative the story of his being belaboured at about 5 or 6 a.m. on the 28th of September, 1954.

The time of death of Hardeva given in the first information report is immediately after the occurrence, i.e.. 5 or 6 a.m., although in evidence it has been given to be 12.00 Noon. It may be that either Hardeva died at about 5 or 6 a.m., his digestive organs might have become so incapable of functioning after the mar-peet that he could not digest the food which was somewhat undigested at the time of his belabouring. I do not find any reason to disbelieve the evidence of the above eye-witness that Hardeva was belaboured by the appellants first set. I have not taken into account the evidence of Arjun, who, according to Ganesha was not present at the time of the belabouring of Hardeva.

16. Besides Hardeva, injuries were caused to Mst. Chandni and Harchand. Therefore, there is no doubt that force or violence was used to them also. It is proved by the evidence of the above mentioned four witnesses as well as other evidence that there was bad blood between the Ahirs and the Jats of Anandpur on account of the Chamars claiming to break the banjar. It is also fully proved that Ahirs far out-number the Chamars in the village Anandpur. The appellants first set came armed with lathis and as soon as they came on the spot, they began to belabour Hardeva and then belaboured Harchand, who wanted to rescue his father.

This clearly proves that the appellants first set had a common object of teaching the Chamars a lesson for their audacity to claim to break the banjar. To my mind, therefore, the appellants first set were rightly convicted under Section 147, I. P. C. They might also have been convicted at least under Section 323, I. P. C. read with Section 149, I. P. C. but simply because they have not been so convicted, it does not mean that they should be acquitted of the offence of rioting also.

17. Then I come to the case of the appellants second set. They have also been held guilty of riot. However, from the prosecution evidence, I find that they were not among the appellants first set in the belabouring of Hardeva, Mst. Chandni or Harchand. According to the prosecution evidence, they were standing somewhat apart from the appellants first set and as a matter of fact, quite a large number of

Ahirs were present in that crowd. Simply because certain persons are present in a crowd at the time of a riot by certain members of their community, it cannot be said that these also, who used no violence, were guilty of the riot.

The material four prosecution witnesses, whose evidence has been consulted above, did not say a word that the appellants second set were also in the assembly of the appellants first set when the latter committed riot and belaboured Hardeva and others. The witness Parbhati (P. W. 4) goes so far as to say that the appellants second set. i.e.. Mina, Ramjilal, Mukhram and Hira came from the other side and began to beat him with sticks. Among all these four, he said that only Mina was present in Court although Ramjilal and Hira were also present in Court. He also said that he did not see other accused with the eight accused persons of the first set who were beating Hardeva. Under these circumstances, the appellants second set were not properly convicted under Section 147, I. P. C. (The rest of the judgment deals with the individual cases of the appellants and is not necessary for the purpose of the report.)

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